

APPEAL NO. 041278
FILED JULY 13, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 29, 2004, with the record closing on May 3, 2004. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the second quarter. The claimant appealed, arguing that he is entitled to SIBs for a portion of the qualifying period. The respondent (carrier) responded, urging affirmance of the hearing officer's determination.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated to the eligibility criteria of a compensable injury, impairment rating, no commutation of impairment income benefits, that the qualifying period for the second quarter was from October 23, 2003, through January 22, 2004, that the second quarter was from February 4 through May 4, 2004, and that during the qualifying period for the second quarter the claimant did not attempt to obtain employment. At issue is the requirement of Section 408.142(a)(4) and rule 130.102(b)(2) that the claimant has made a good faith effort to obtain employment commensurate with his ability to work. The claimant proceeded at the CCH on a basis that he had a total inability to work in the second quarter qualifying period.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer found that there is no narrative report from a doctor which specifically explains how the injury causes a total inability of the claimant to work. Our review of the documents presented at the hearing indicates that there is sufficient support for the hearing officer's determination that the claimant failed to meet the requirements to make a good faith effort to obtain employment under Rule 130.102(d)(4).

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant argues on appeal that he should be entitled to SIBs for a portion of the qualifying period and states that the finding that the claimant did not attempt to obtain employment during the qualifying period should only apply for the time period of December 3, 200[3], through January 22, 2004. The parties stipulated that during the qualifying period for the second quarter the claimant did not attempt to obtain employment. Section 410.166 provides that an oral stipulation preserved in the record is final and binding. To the extent that the claimant is asserting SIBs entitlement based on meeting a combination of the rules, we note that the claimant must produce evidence that established the requirements of Rule 130.102(d)(4) for the period of time that no ability to work was asserted and evidence that meets the criteria of Rule 130.102(e) for that period of time wherein a good faith job search was claimed. See Texas Workers' Compensation Commission Appeal No. 001877, decided September 19, 2000, Texas Workers' Compensation Commission Appeal No. 002428, decided December 1, 2000, and Texas Workers' Compensation Commission Appeal No. 010459, decided April 10, 2001. Further, the claimant limited his argument at the CCH to a total inability to work.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**RY
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge